RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ३७] गुरुवार ते बुधवार, नोव्हेंबर २७-डिसेंबर ३, २०१४/अग्रहायण ६-१२, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 426 of 1998.—Sadashiv Tatoba Kamat, At, Post and Taluka Radhanagari, District Kolhapur.—*Complainant.* —*Versus*— Kolhapur District Central Co-Op. Bank Ltd., Kolhapur, H. O. at 1092, E Ward, Shahupuri, Kolhapur, through its Manager.—*Respondents.*

CORAM.— Shri C. A. Jadhav, Member.

Advocates.—Shri P. S. Kulkarni, Advocate, for the Complainant.

Shri. R. L. Chavan, Advocate for the Respondents.

Judgement

(Dated the 24th November 2003)

(Dictated in Open Court)

This is a Complaint under Sec. 28, read with Items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Respondent, Kolhapur District Central Co-op. Bank., Kolhapur (hereinafter referred to as 'the Bank') is a Co-operative Bank duly registered under the Maharashtra Co-operative Societies Act and does Banking business within the territorial limits of Kolhapur District. It is also registered as an ' undertaking ' under the Bombay Industrial Relations Act. Eventually, it is amenable to the provisions of the M. R. T. U. and P. U. L. P. Act, 1971. It is not in dispute that the Bank has its own standing orders settled under Sec. 35 (2) of the B. I. R. Act.

3. It is case of the Complainant that he is in employment of the Bank as Peon with its Radhanagari Branch from 2nd July 1984 on daily rate basis and is an 'employee' within the meaning of Sec. 3(5) of the M. R. T. U. and P. U. L. P. Act. It is then alleged that he was appointed during the period of leave of other employees from 2nd July 1984 till end of the year 1995. Therefore, he is

employed on daily rate basis. He is paid wages on vouchers in his own name and sometimes on fictitious name. He refused to accept the wages from December, 1997 till September, 1998 as the Bank insisted to accept the wages on vouchers on fictitious name. As such, he is not paid wages for the requisite period.

4. It is then alleged that he is doing same work like performed by permanent employees working on same post. However, he is not paid same wages on the principle of 'equal wages for equal work'. The Bank cannot discriminate him from permanent employees. Payment of more wages to permanent employees is favouritism or partiality to one set of workers, regardless of merits, which is an unfair labour practice under Item-5 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

5. It is then alleged that the Complainant, as per Certified Standing Orders, is entitled to be classified but the Bank has failed to do so which is an unfair labour practice under Items-9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

6. On above averments, the Complainant has prayed for requisite declaration of an unfair labour practice, direction to classify and appoint him as per the Certified Standing Orders. Further directions to pay equal wages like paid to permanent employees and other consequential reliefs.

7. The Bank filed its written statement at Exh. C-7 contending, at the outset, that averments in the complaint do not attract Items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. There is a representative and approved union and the Complainant cannot file the complaint in individual capacity.

8. It is case of the Bank that the Complainant was taken on daily wages as and when needed and, therefore, is not entitled to be classified under the standing orders. He has no right of employment and never put continuous service for 240 days or more. In fact his appointment was on daily rate basis and there is no relationship as an employer and employee. In addition, the Complainant was not appointed through employment exchange and no sanction of Co-operative Deptt. was obtained prior to his appointment. Finally, the Bank prayed for dismissal of the complaint.

9. Considering rival pleadings, following issues arise for my determination :—

(*i*) Does the Complainant prove that the Bank has shown favouritism or partiality to permanent employees regardleas of merits ?

(*ii*) Does the Complainant prove that the Bank has failed to discharge its statutory obligation as per Certified Standing Order ?

(*iii*) Does the Complainant further prove that the Bank has engaged in unfair labour practices under Items-5, 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act ?

(*iv*) What order ?

10. My findings, on above Issues, are as under :—

(*i*) No.

(*ii*) Yes.

(*iii*) Yes, under Item-9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

(*iv*) The Complaint is partly allowed.

Reasons

11. The Bank has objected maintainability of the complaint on the ground of existence of two representatives and approved unions. In addition, it is contended that the Complainant is a daily rated employee.

12. Shri Kulkarni, learned Advocate representing the Complainant, submitted that none of the approved and representative unions have appeared and/or objected maintainability of the Complaint. It is a matter between the Complainant and two unions and the Bank cannot agitate that approved and representative union alone ought to have filed the complaint. He then submitted that non-implementation of standing orders is main grievance of the Complainant and the complaint is maintainable inspect of existences of two unions. He then pointed out that applications filed by the two unions, in other identical complaints for transposing in place of the Complainants, are rejected.

13. I must state that many of daily rated employees filed similar complaints which are decided by a Common Judgement and Order dated 26th June 2002. Applications filed therein by the two unions for transposing them in place of the Complainants are rejected. It is not necessary to reiterate reasonings thereof. Suffice to say that the complaint is maintainable for the reasonings given while rejecting the applications of the two unions.

14. The Bank has produced a chart (Ex. U-11) of working days of the Complainant it shows that the Complainant was employed from 1st June 1984 to 23rd November 1997, from to time, on daily rate basis. Advocate Shri Kulkrni stated that the Complaninant is still in employment on same basis. Advocate Shri Chavan, repesenting the Bank, did not dispute the same.

15. Question of Complainant's accountability and liability while considering his claim of equal wages, goes to the root of the matter. There is no positive and convincing evidence on record to show his nature of work and extent of participation in regular business of the Bank. Claim for equal pay depends upon nature of work and responsibility. Daily rated employees like the Complainant are not required to go through process of selection. Consequently, it cannot be accepted that the Bank has showed favouritism or partiality to its permanent employees, regardless of merits. Accordingly, I answer Issue No. 1 in the negative.

16. Advocate Shri Kulkarni, in the second phase, argued that Sec. 40 of the B. I. R. Act provides that the standing orders shall be determinative of the relations between the employer and his employee. Clause-(5) of certified standing orders makes it mandatory that every employee shall be given written order by the Bank. There is no explanation by the Bank for not issuing written appointment order to the Complainant although he is 'temporary employee' as defined under the standing orders. Failure to implement provisions of the standing orders is an unfair labour practice under Item-9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

17. Advocate Shri Chavan replied that the Complainant was taken on daily wages. There was no sanctioned post and hence has no right to employment. Consequently, he is not entitled to be classified.

18. I must repeat that many identical complaints are disposed of by a common Judgment and Order on 26th June 2002. Observations and findings therin are squarely applicable to this case. I do not wish to repeat those observations. I have held therein that the Bank is bound by the certified standing orders, has to abide by the provisions thereunder and to classify the Complainants as long as they in service.

But the Bank has failed to do so which is an unfair labour practice under Item-9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. I answer Issue Nos. 2 and 3 accordingly and pass following order :—

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that the Bank has engaged in unfair labour practice under Item-9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971. and

(*iii*) The Bank is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*) The Bank is further directed to classify the Complainant as 'temporary employee' and accordingly issue an appointment order to him, within one month from today.

(*v*) Relief of equal wages is rejected.

(*vi*) Parties shall bear their own costs.

C. A. JADHAV,

Kolhapur, Member,

Dated the 24th November 2003. Industrial Court, Kolhapur.

Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 157 OF 1997.—The Kolhapur Sugar Mills Ltd. Kasaba Bavada, Kolhapur.—*Petitioner.*—*Versus*— Shri Raosabeb Dnyanu Ulpe, Ulpe Mala, Kasaba Bavada, Kolhapur.—*Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri A. S. Nevagi, Advocate for the Petitioner.

Shri. D. S. Joshi, Advocate for the Respondent.

Judgement

This is a Revision by original Respondent Sugar Mill challenging legality of Judgment and Order passed in Complaint (ULP) No. 168 of 1988 by Labour Court, Kolhapur whereby the Mill is directed to reinstate its employee original Complainant with continuity of service and full back wages.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was in employment of present Petitioner (here after referred to as the Sugar Mill in as Fermentation Mate. He was served with chargesheet dated 24th July 1988 alleging that he abused and threatened the shift in-charge Shri Kurane on 23rd June 1988 and was under influence of alcohol at that time. Then an enquiry took place. Ultimately, he was dismissed on 1st September 1988. It is the case of the Complainant that the enquiry was altogether unfair and contrary to the principlels of natural justice. The Enquiry Officer did not inform him about his rights in the enquiry and that he can avail services of any qualified person to represent him in the enquiry. As such, he was unable to properly defend himself in the enquiry. It is then alleged that the Enquiry Officer worked as a Prosecutor *cum*-Judge and cross examined him on first date of enquiry *i.e.* 8th July 1988. It is utter disregard of principles of natural justice. It is further alleged that entire enquiry was completed with undue haste and he was not informed that he can lead defence exitence. It is then alleged that findings of the Enquiry Officer are perverse and, in any case, punishment of dismissal is perverse. Finally, the Complainant prayed for requisite declaration of unfair labour practice, reinstatement with continuity of service and full back wages and other consequential reliefs.

3. The Sugar Mill filed its Written Statement at Exh. C-10 contending that the enquiry was fair and proper and sufficient opportunity was given to the Complainant to defend himself. Mere inturrogation by the Enquiry Officer does not amount to breach of Principles of natural justice. Findings of the Enquiry Officer are well justifiable and punishment for the proved misconduct is legal and proper. Finally, the Sugar Mill prayed for dismissal of the complaint.

4. Considering rival pleadings, learned Labour Court framed issues at Exh. 13. It, after hearing both parties, passed order on 18th December 1993 that the enquiry is contrary to the principles of natural justice and stands vitiated. It, then directed the Sugar Factory to lead evidence in support of it's action.

5. The Complainant examined himself. He deposed that he was on leave from 22nd June 1988 to 23rd June 1988 and consumed liquor on 23rd June 1988 as there was fair in his village. But he was called to join third shift of 23rd June 1988 commencing from 8 p. m. The Sugar Mill and its Advocate were absent and failed to cross examine the Complainant. Learned Labour Court then held that the Sugar Mill has failed to prove alleged misconducts and allowed the complaint, as above, on 20th March 1997. Said decision is challenged in this Revision.

6. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision directing reinstatement and other reliefs, warrante interference ?

(*ii*) What order ?

7. My findings, are as under :

(*i*) Yes.

(*ii*) The Revision Application is partly allowed.

Reasons

8. It is not in dispute that the Sugar Factory was directed to lead evidence in support of its action but failed. It has come on the record that the Complainant was prosecuted by Police *Vide* Summer Criminal Case No. 17757 of 1988 alleging that he behaved in a disorderly manner in public place under the influence of liquor. He admitted the guilt and was sentenced to pay fine of Rs.45.

9. Shri Nevagi, learned Advocate representing the Sugar Mill argued firstly that Complainant's voluntary admission before the Judgement Magistrate was more than sufficient to prove alleged misconduct. But the Labour Court extended misplaced sympathy to the Complainant mainly on the ground that the Sugar Mill was absent. Cognisance of the fact that the Complainant pleaded guilt voluntarily, is not taken. He secondly submitted that the matter be remanded to Labour Court for afresh hearing by fixing a time limit.

10. Shri Joshi, learned Advocate representing the Complainant replied that the Complainant is out of employment since the year 1988 and should not suffer for latches of the Sugar Mill. He then submitted that the Sugar Mill was directed to deposit Rs.10,000. While staying execution of impugned decision. In such circumstances, the Sugar Factory be directed to pay some additional amount to the Complainant, if the matter is going to be remanded. He did not seriously object for remanding the matter.

11. The Complainant has deposed that he consumed alcohol on 23rd June 1988 as was on leave on 22nd June 1988 and 23rd June 1988. He was not knowing that he would be called for duty in third shift. He also admitted that he was fined by the Juidiclal Magistrate. In such circumstances, one cannot directly jump to the conclusion that alleged misconducts are not proved though the Sugar Mill did not cross examine him. The Complainant has further pleaded guilty volunterily and certified copy of Order imposing fine upon him is on record. Thus, it appears that learned Labour Court mechanically and blindly believed Complainant's plea. I, therefore, find that learned Labour Court has not decided the controversy Judicially and in a proper perspective. It will be better if the same is decided afresh after extending some opportunity of being heard to both parties. Accordingly, I answer point No. 1 in the affirmative.

12. Before parting with this order, the Complainant needs to be compensated partly. In the fitness of the matter, the Sugar Mill is directed to deposit Rs.10,000 in the Labour Court, within 15 days from today and the Complainant is entitled to withdraw the same. Likewise, the matter is pretty old and needs to be expediated.

13. To conlude, I pass following order :—

Order

(*i*) The Revision is partly allowed.

(*ii*) Impugned decision directing reinstatement with continuity of service and full back wages is set aside.

(*iii*) The Petitioner Sugar Mill is directed to deposit Rs.10,000 in the Labour Court, within 15 days from today. The Complainant is entitled to withdraw the same.

(*iv*) The Labour Court is directed to decide the original Complaint afresh after extending reasonable opportunity of being heard to the parties, within six month from today.

(*v*) The parties shall appear before Labour Court on 5th December 2003.

(*vi*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 25th November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No.15 of 2002.—Kolhapur Municipal Corporation, through its Commissioner, Kolhapur.—*Petitioner.*—*Versus*— Shri Anandrao Shripati Patil, R/o. 633, B/14, Jawahar Nagar, Kolhapur.—*Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri Y. G. Salokhe, Advocate for the Petitioner.

Complainant/Respondent in person.

Judgment

This is a Revision by Original Respondent, Kolhapur Municipal Corporation, challenging legality of order passed in complaint (ULP) No. 72 of 2000 by Labour Court, Kolhapur, whereby, the corporation is directed to restore status of its employee Original Complainant by setting aside his Dismissal Order holding the same to be an unfair labour practice under items 1(*b*) and (*f*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

2. Present Respondent (hereinafter referred to as the Complainant) filed above complaint against present Petitioner (hereinafter referred to as the Corporation) alleging unfair labour practice under Items 1 (*a*), (*b*) (*f*) and (*g*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act, *inter alia,* contending that the Corporation illegally imposed punishment on 26th May 1989 of withholding two increments. He challenged the punishment by filing complaint before this Court, however, the same was dismissed on the ground that a complaint by an individual employee is not maintainable. He then filed complaint (ULP) No. 127 of 1996 contending that the Corporation, as a retaliatory action, served chargesheet dated 19th May 1998 against him alleging various misconducts. It is then contended that the Enquiry is not fair and proper, and findings of the Enquiry Officer are pervese.

3. The Corporation then served Show Cause Notice dated 14th October 1999 stating that the misconducts alleged are proved and called upon him to show cause as to why his basic wages should not be brought down. The Complainant then submitted his reply dated 2nd November 1999 and demanded personal hearing. The Corporation then terminated the Complainant by order dated 1st March 2008.

4. It is alleged by the Complainant that he was served with notice to show cause as to why his basic salary should not be brought down. However, enhanced punishment of dismissal is awarded which is unsustainable in law. It is then alleged that the Corporation has acted *malafidely* in colourable exercise of powers by altering enhancing the punishment which is an unfair labour practice. Finally, he prayed for reinstatement with continuity of service and full back wages with effect from 1st March 2000.

5. The Corporation filed its Say-*cum*-Written Statement at Exh. C-13 denying all material allegations made by the Complainant. It contended that it has not engaged in any unfair labour practice and justified its action. Finally, it prayed for dismissal of the Interim Application as well as the Complaint.

6. Learned Labour Court, with consent of both parties, expediated final hearing. It framed issues at Exh. 0-22. The parties then went to the Trial.

7. The Complainant produced copies of Final Show Cause Notice, Enquiry Report, his Explanation and Dismissal Order with list Exh. U-4. The Corporation produced copies of Enquiry Papers and Report there of with list Exh. C-26.

8. Learned Labour Court, on perusal of evidence and hearing both parties, observed that punishment of dismissal was nowhere proposed in Show Cause Notice and documents referred therein like resolution of Standing Committes etc. were not delivered to the Complainant and, therefore, punishment of dismissal is not in good faith but in the colourable exercise of powers as well as with utter disregard to the principles of natural justice. It then held that, therefore, issue as to whether findings of the Enquiry Officer are perverse or does not survive. Finally, it allowed the complaint partly on 2nd January 2002 with a direction to restore Complainant's earlier status. Said decision is challenged in this Revision.

9. I heard Corporation's Counsel. The Complainant personally made his submissions. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision setting aside the dismissal by directing the Corporation to restore Complainant's earlier status with liberty to Corporation to take perspective action as per the Show Cause Notice, warrants interference ?

(*ii*) What order ?

10. My findings on the above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is dismissed.

Reasons

11. This being a Revision under Section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival pleadings meticulously. The only material question is whether the documents on record are incapable of supporting impugned decision. In other words, whether impugned decision is perverse or injustifiable ?

12. Admittedly, the Complainant was issued Notice, dated 14th October 1999 to show cause as to why punishment of reducing him to a lower stage should not imposed. However, he was dismissed by Order dated 1st March 2000.

13. Shri Salokhe, learned Advocate representing the Corporation tried to canvass that misconducts alleged against the Complainant were proved and, therefore, the Labour Court had no jurisdiction to interfere with the punishment.

14. It is interesting to note that Order of Dismissal nowhere refers to the Show Cause Notice, dated 14th October 1999 and Complainant's explanation thereof dated 2nd November 1999. Thus, it appears that Municipal Commissioner totally ignored his decision proposing to impose punishment of reduction to a lower stage. It is nowhere explained by the Corporation as to how it decided to enhance the punishment and that too unilaterally. Advocate Shri Salokhe was unable to point out any provision from the Bombay Provincial Municipal Corporation Act empowering the Municipal Commissioner to enhance the punishment than proposed. I, therefore, find that learned Labour Court has rightly held that Punishment of Dismissal is an unfair labour practice and allowed the Complaint, partly.

15. Admittedly, the Complainant was under suspension pending the enquiry. Naturally, his status will have to be restored while setting aside the dismissal and learned labour Court has rightly directed accordingly. It has also rightly given liberty to Corporation to take perspective action as per Show Cause Notice. I, therefore, find that there is no merit in the Revision Application.

16. I must state that the Complainant has given various applications in the Revision to direct the Corporation to withdraw his suspension and allow him to join duties. However, the same is not subject matter of the Complaint and consequently this Revision. As such, all those applications are required to be filed.

17. It also needs to be stated that learned Labour Court has not decided issue regarding perversity of findings of the Enquiry Officer. Eventually, above Observations are restricted to the legality of Punishment and issue of Perversity Findings is kept open.

18. To summarise, there is no arbitrariness or perversity in Impugned Decision requiring revisional interference. Accordingly, I answer Point No. 1 in the negative and pass following Order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 18th November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No.53 Of 2002.—Shri Kakaso Abaso Bhosale, R/o. Ranjani, Taluka, Kavathe Mahankal, District Sangli.—*Petitionner.* —*Versus*— Maharashtra State Road Transport Corporation, Sangli Dn. Sangli, through its, (1) Divisional Transport Superintendent, (2) Divisional Controller.—*Respondents.*

In the matter of Revision U/s 44. of the M.R.T.U. and P.U.L.P. Act, 1971.

Coram.— C. A. Jadhav, Member.

Appearances.—Mr. and Mrs. S.S. Mutalik, Advocate for the Petitioner.

Shri A. N. Kulkarni, Law Officer for the Respondents.

Judgement

This is a Revision by Original Complainant challenging legality of order passed below his interim Application (Exh. U-2) in Complaint (ULP) No. 30 of 2002 by Labour Court, Sangli, whereby relief of restraining his employer original Respondent from dismissing him, is refused.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) joined present Respondent (hereinafter referred to as the Corporation) in the year 1979 on the post of a helper. He was then promoted on the post of 'Art C' and then to 'Art A'. He contested election of Ranjani Grampanchayat and was elected as its member of 24th May 2001. Rule 48 (B) of Corporation's Service Rules says that no employee shall contest the election to any Grampanchayat except with permission of Vice President and the General Manager of the Corporation. The Complainant did not obtain requisite permission while contesting the election. The Corporation then served chargesheet dated 31st October 2001 upon him mainly alleging that he contested the election of Grampanchayat, without prior permission. The Complainant gave explanation dated 24th November 2001 that he was unaware of the Rule of obtaining prior permission, tendered the resignation but was informed that he cannot resigned within six months of the election. His enquiry commenced on 5th April 2002 and was completed on same day. In the mean time, the Complainant gave resignation on 26th March 2002 *i.e.* prior to commencement of the enquiry itself. The Enquiry Officer held that the Complainant ought to have read service rules and Corporation's circular dated 31st October 2001, however, committed breach thereof and committed serious misconduct of contesting election without permission. Finally, he was served with notice dated 12th April 2002 to show case as to why he should not be awarded punishment of dismissal.

3. It is case of the Complainant that his past service record is clean and unblemished and was given jumping promotion from 13th December 2001 from Art 'C' to Art 'A'. He was umaware of the Rule of obtaining prior permission for contesting election of Grampanchayat. He intended, on receipt of chargesheet, to resign from the post but was told that he cannot resign within six months. He then resigned prior to commencement of the Enquiry. Even then, he is held guilty. Findings of the Enquiry Officer are totally perverse and reliance on Circular dated 31st October 2001, is baseless. The circular has no statutory sanction or force. It is then contended the did not obtain leave even for a single day despite being elected and his past unblemished record of 24 years is altogether ignored. Corporation's work was nowhere hampered and he discharged his duties punctually. As such, proposed punishment of dismissal is totally unjustifiable and in the alternate grossly disproportionate. Finally he prayed for requisite declaration of unfair labour practice and usual reliefs. He also made interim application (Exh. U-2) to restrain the Corporation from dismissing him and to maintain *status quo* regarding his service conditions, pending the hearing and final disposal of main complaint.

4. Learned Labour Court issued *ad-interim* order directing the corporation to maintain *status quo* with show cause notice.

5. The Corporation filed its say *cum* written statement at Exh. C-4 contending that the Complainant did no obtain prior permission to contest the election and was not entitled to contest the election, unless resigns from the post. Charges levelled were proved in the enquiry. The Complainant took leave for canvassing his candidature ship for the period 18th May 2001 to

25th May 2001. As such, punishment of dismissal is commensurate to the proved misconduct and it is not necessary to verify his past record. No *prima facie* case of an unfair labour practice is made out and, therefore, ad-interim order be vacated. Finally, the Corporation Justified its action and prayed for dismissal of interim application as well as the complaint.

6. The Complainant produced copies of relevant documents whereas the Corporation entire enquiry papers except Complainant's default card.

7. The Labour Court, after hearing both parties, observed that Corporation's Circular dated 31st October 2001 bars Corporation's employees from taking active part in politics as well as contesting elections and, therefore, proved misconduct is of serious nature. It then observed that the Complainant contested the election by obtaining leave illegally. It further observed that the Complainant has tendered resignation to village Development Officer and has wrongly contended that it was tendered to Tahasildar. It then held that the Corporation was not bound to communicate its rules to the Complainant and it cannot be said that the Complainant was unaware of the same. Finally, it held that Corporation's action is fair and proper and rejected the interim Application (Exh. U-2) on 28th June 2002. Said decision is challenged in this Revision.

8. I heard the learned Advocate representing the complainant and learned Law Officer of the Corporation. Considering rival submissions, following points, arise for my determination :—

(*i*) Whether impugned decision of refusing to grant the relief, is legal and proper ?

(*ii*) What order.

9. My findings, on above points, are as under :--

(*i*) No.

(*ii*) The Revision Application is partly allowed.

Reasons

10. The factual position arising out of rival pleadings are no longer in dispute. The Complainant contested the election of Grampanchayat without prior permission of the Corporation but tendered resignation before commencement of the enquiry.

11. Mrs. Mutalik learned Advocate representing the Complainant argued at the out set that Complainant's past service of 24 years is clean and was given jumping promotion from the post of Art C to Art A. However, his default card which is exclusively in custody of the Corporation is not produced for no reasons. Therefore, *prima facie,* it has to be accepted that Complainant's past record is good.

12. There is no explanation by the Corporation for not producing Complainant past record. Non production thereof, *prima facie,* says that his past record is good. Admittedly, Discipline and Appeal Procedure of the Corporation provides that due regards has to be given to past record. Learned Labour Court has nowhere considered but rather ignored this material aspect.

13. It is the case of the Corporation that the Complainant was not entitled to contest the election without resigning from his post. Mrs. Mutalik submitted that the Enquiry Officer has mainly relied upon circular dated 31st October 2001 wherein, it is stated that concerned employee must resign if wishes to take active part in politics or to contest election and punishment of dismissal is expected. However, said circular has no statutory force as the Discipline and Appeal Procedure of the Corporation no where contemplates the same. On the contrary, an employee can contest the election and simultaneously can attend the duties. For that and, she relied on the decision of *Vasant Govind Chibilwar* Versus *Maharashtra State Road Transport Corporation reported in 1999 II CLR at page 207 (BOM. H. C.).* Shri Kulkarni, learned Law Officer for the Corporation fairly conceded that Circular dated 31st October, 2001 is not mandatory, has no force of law but is directory in nature. He then explained that decision in vasant Govind Chibilwar's case (referred above) is inapplicable as the Petitioner therein was member of the Council prior to his re-employment.

14. I am respect fully bound by the observations in Chibilwar's case (referred above). It is held that stand taken by the Corporation that an employee can remain either as a councilor or in service of the Corporation, is not correct and rule 48 (B) of Rule admits of a possibility of an employee being in employment of the Corporation and simultaneously being member of the Corporation. It is then observed that the Corporation was expected to exercise its power and grant permission under Sec. 48 (B). Therefore, Circular dated 31st October 2001 has no statutory force, Discipline and Appeal Procedure of the Corporation does not provide that punishment of dismissal is a must for contesting election without Corporation's permission. On the contrary, many other punishments and provided for such misconduct.

15. Considering above observations of their Lordship, it cannot be accepted that an employee must resign from his post if wishes to take part in politics or to contest election. In such circumstances, the Petitioner cannot be blamed for contesting the election however, he ought to have obtained prior permission.

16. Mrs. Mutalik further argued that the labour Court has altogether ignored material fact of resignation by the Complainant prior to commencement of the enquiry as well as his past record and punctual services, even after being elected. The Complainant was nowhere chargesheeted that he illegally obtained the leave and contested the election. But the Labour Court has misdirected itself in that context. It is not case of the Corporation that its working was hampered after the Complainant became member of the Grampanchayat or he was negligent in duties. Circular dated 31st October 2001 says that regular and punctual service is expected from an employee and he should not indulge into any activities which were detrimental to his services as well as services rendered to corporation. The Complainant was punctual even after being elected. His Bona fides in tendering resignation prior to commencement of the enquiry are totally ignored and a mechanical finding that misconduct is serious is recorded.

17. Law Officer Shri Kulkarni replied that indulgence in politics is a serious misconduct and act of tendering resignation is after thought. Ignorance of rules cannot be an excuse. Let the enquiry be complete and then the Complainant is entitled to take recourse to appropriate action. The charges are proved and the Corporation is entitled to take legal action.

18. It is settled law that a Complaint under item 1 of Sch. IV of the M.R.T.U. and P.U.L.P. Act can be filed before discharge or dismissal. The Complainant has contested the election without speaking prior permission of the Corporation, however, has resigned from his post prior to commencement of the enquiry. There is no finding by the Labour Court that Complainant's such act has resulted into inconvenience to the Corporation nor such is the case of the Corporation. As such, it can be well said that Corporation's working is no where affected due to election of the Complainant as a member of the Grampanchayat. On the contrary, his *Bona fides* are well reflected due to resignation and that too prior to commencement of the enquiry. Rule 48 (B) of Service Rules admits of possibility of an employee being in employment of the Corporation and simultaneously member of a local body. Therefore, the only misconduct by the Complainant is failure to obtain the requisite permission. Mrs. Mutalik relied on the decision of *Rajasthan State "Electricity Board* Versus *Iqbal Singh reported in 1996 Lab. I.C. at page 1526 (Rajasthan H. C.)* wherein, it is observed that the expression misconduct covers a large order of human conduct and the term has to be construed with reference to the subject and the context in which it is used. It is then clarified that wilful and intentional dis-obedience of the instructions of the superior authority will amount to misconduct and the doer must know that he is wrong. However, an inadvertent violation of certain instructions without any ulterior motive would not amount to misconduct. In the present case, Complainant's failure to obtain permission, *prima facie,* cannot be accepted to be calculated an attempt to defy Rule 48(B). His past record appears to be clean and unblamished. The Corporation is nowhere put to inconvenience by his such act. In such circumstances, *prima facie*, proposed punishment of dismissal appears to be shockingly disproportionate and the misconduct is a minor or technical nature. I must say that there could have been no misconduct if the Complainant would have obtained the permission. Considering Complainant's past good record, no prudent or

reasonable employer would impose punishment of dismissal for misconduct of a minor nature. It appears that learned Labour Court has applied wrong legal test and mis-read the facts. It has altogether ignored the material fact of tendering resignation prior to commencement of the enquiry and no inconvenience to the Corporation. I therefore, find that learned Labour Court was totally wrong in refusing to grant interim relief. Accordingly, I answer Point No. 1 in the negative. But the case does not end here. Complainant's failure to obtain requisite permission, *prima facie,* is a misconduct of minor or technical nature. As such, liberty is given to Corporation to impose appropriate punishment other then of dismissal or discharge. Thus, impugned decision is required to be set-aside by allowing the Revision partly.

19. In the result, I pass following order.

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned order rejecting interim application (Exh. U-2) is set-aside and said application is partly allowed.

(*iii*) The Respondent is directed not to terminate Complainant's services, pending the hearing and final disposal of main complaint. However, the Corporation is entitled to impose appropriate punishment other than of dismissal or discharge.

(*iv*) R. and P. be sent to Labour Court, Sangli and parties shall appear there on 19th December, 2003.

(*v*) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 25th November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) Nos. 77/2003.—Shri Panchaganga Sahakari Sakhar Karkhana Ltd. Ganganagar, Ichalkaranji.—*Petitioner.*—*Versus*— Shri Mohan Laxman Potdar, Room No. 84, Karkhana Colony, Ganganagar, Ichakkaranji.—*Respondents.*

In the matter of Revision u/s. 54 of the M.R.T.U. and P.U.L.P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri M. S. Topkar, and Shri D. M. Patil, Advocate for the Petitioner.

Shri. S. R. Rane, Advocate for the Respondent.

Judgement

This is a Revision by Original Respondent Sugar Factory challenging legality of Judgment and order passed in Complaint (ULP) No. 482 of 1992 by Labour Court, Kolhapur whereby, the Sugar Factory is directed to pay full back wages to original Complainant till the date of his superannuation, by setting aside his termination.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was in employment of present Petitioner (hereinafter referred to as the Sugar Factory) from 18th March 1959. The Sugar Factory terminated him by order dated 13th November 1992. It is alleged in the termination order that he is absent from same date. It is further alleged that he has made illegal statements against the Sugar factory, thereby mislead the general public and the Sugar Factory has lost confidence in him.

3. Above Complaint was filed on 30th November 1992 alleging unfair labour practice under items 1(*a*), (*b*), (*d*), (*e*) and (*f*) Sch. IV. of the M.R.T.U. and P.U.L.P. Act, *inter alia*, contending that Complainant's termination without enquiry is bad in law. Plea of loss of confidence as well as absence is totally after thought and the termination is an unfair labour practice.

4. The Complainant also filed an application (Exh. U-2) for temporary interim reinstatement. The Sugar Factory objected the application *vide* Reply Exh. C-18 contending that it could not afford to wait till conduction of enquiry as there was total and complete loss of confidence in the Complainant and hence the Complainant was summarily dismissed. It then contended that it will lead evidence to prove the misconduct and interim temporary reinstatement will practically amount to grant of final relief at the inter-locutory stage.

5. The sugar Factory filed its written statement at Exh. 23, reiterating the contentions raised in the reply Exh. C-18. It added that the Complainant was unauthorisedly absent and openly participating in the campaign of elections of Board of Directors. The Campaign was ill-motivated and contains false allegations. It then showed ready and willingness to prove the misconduct before the Court. Finally, it prayed for dismissal of the Complaint.

6. Considering rival pleadings, the labour Court framed issues at Exh. 0-24 and the parties went to the trial. The Complainant produced termination order with list Exh. U-4 and examined himself on oath at Exh. U-25. He denied that he was in employment of Sindh Khandsari, at Chipri. He stated that he was on leave on 13th and 14th November 1992. He deposed that he completed 60 years as on 5th May 1996.

7. The Sugar Factory wished to examine Acting Manager of Shri Sindh Khandsari Ltd. On issuance of summons to him, President thereof made a Report (Exh. 0-36) that no person having name of the Complainant was in its employment. The Sugar factory then led no oral or documentary evidence. The learned Labour Court, on perusal of evidence of the Complainant and hearing both parties, held that Complainant's termination without enquiry is an unfair labour practice. It also held that the Sugar Factory has not lead evidence to justify its action. The Complainant reached the age of superannuation, pending the complaint. It, therefore direction the Sugar Factory to pay full back wages till the age of superannuation and all retirement benefits. Said decision is challenged in this Revision.

8. I heard both sides at length. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned finding that Complainant's termination is an unfair labour practice, warants interference ?

(*ii*) Whether impugned order to full back wages till date of superannuation and the retirement benefits, warrants interference ?

(*iii*) What order ?

9. My findings, on above points, are as under :

(*i*) No.

(*ii*) No.

(*iii*) The Revision Application is dismissed.

Reasons

10. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival pleadings meticulously. The only material question is whether the documents on record are incapable of supporting impugned judgment. In other words, whether impugned judgment and order is perverse or unjustifiable ?

11. The Sugar factory, though came with a spacious and specific plea that it cannot afford to wait till conduction of enquiry and will prove the misconducts and plea of loss of confidence in the Court itself, no evidence is lead in support thereof. As such, I have no difficult to hold that finding of unfair labour practice recorded by the Labour Court is legal one. Accordingly, I answer Point No. 1 in the negative.

12. As regards grant of full back wages till the date of superannuation *i.e.* from 13th November, 1992 to 5th May, 1996, Shri Patil, learned Advocate representing the Sugar Factory tried to canvass that the Complainant did not press interim application (Exh.U-2) and latches of his part does not entitled him to claim full back wages.

13. The Complaint and interim Application (Exh. U-2) are filed on 30th November 1992 Say (Exh. 18) to the interim application is filed on 3rd March 1993 contending that the Sugar Factory will prove the misconducts in the Court. Surprisingly, the written statement is filed on 16th January, 1999 *i.e.* after more than 6 years. In such circumstances, it cannot be accepted that the Complainant did not press the application (Exh. U-2) for interim relief. On the contrary, the Sugar Factory objected the Application, by invoking theory of relation back, that it will prove misconduct in the Court. It is observed by Hon'ble Apex Court in *Hindustan Tin Workers* Versus *Hindustan Tin Pvt. Ltd. reported in AIR 1979 S. C. at page 75* that ordinary a workman whose services have been illegally terminated will be entitled to full back wages except to the extent he is gainfully employed during the intervening idle period and that is the normal rule. In the present case, the Complainant cannot be blamed on any ground. As such, no case is made out to deviate from the normal rule of granting full back wages. It cannot be said that there was deliberate delay by the Complainant in getting the complaint decided. I, therefore, find that learned Labour Court has rightly granted full back wages till the date of superannuation by saddling costs of Rs. 1000 upon the Sugar Factory. Accordingly, I answer Point No. 2 in the negative.

14. To summarise, impugned decision nowhere suffers from arbitrariness or perversity. On the contrary, there is every substance in its reasoning and no interference is called for and the Revision has no merits.

15. To conclude, I pass following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 24th November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE EMPLOYEES' INSURANCE COURT, AT KOLHAPUR

APPLICATION (EST) No. 4 of 1991.—(1) The General Manager, Shri Shahu Chhatrapatil Mills, Post Box No. 206, Shahupuri, Kolhapur. —*Applicant.*—*Versus*— (1) M/s. Advanced Construction Co., through its Managing Partner, Shri Rajaram Babaji Jadhav, 1140, Datta Krupa, Skyes Extension, S. M. Lohia Marg, Kolhapur, opponents No. 1 (2) The Employees State Insurance Corporation, Through its Asstt. Regional Director, E.S.I.C., S.R.O. P.M.T. Commercial Complex. Swargate, Pune.—*Opponents No. 2.*

In the matter of Application under Sec. 75(*2*)-(*b*) of E.S.I. Act.

CORAM.— C. A. Jadhav, Judge.

Appearances—Shri A. S. Nevagi, Advocate, for the Applicant. .

Shri K. S. Patil, Advocate for the Opponent No. 1.

Shri S. V. Kotnis, Advocate for Opponent No. 2.

Judgement

(Dictated in open Court)

This is an application purported to be under section 77 read with 75 (*2*) (*b*) of the E. S. I. Act to direct Respondent No. 2 Corporation to recover the contribution and interest thereof, determined under section 45A of the E. S. I. Act, from Respondent No. 1 the immediate employer.

2. Admittedly, the Applicant (hereinafter referred to as the Mill) is engaged in manufacturing cotton yarn and cloth. It is covered under the provisions of E. S. I. Act, having Code No. 33-3324. Respondent No. 1 is a partnership Firm engaged in bussiness of building construction. The Mill entered into a contract on 20th May 1975 with Respondent No. 1 for construction of additional buildings. The contract was in the sum of Rs. 20,59,383. Thus, the Mill is "principal employer" whereas Respondent No. 1 "immediate employer".

3. Corporation's Insurance Inspector visited Mills' site and then issued a demand letter dated 8th October 1976. On the basis of *ad-hoc* assessment claim Rs. 2,07,136.95 The costruction was completed by the end of December, 1975.

The Mill then filed an Application (E.S.I.) No. 2 of 1977 in this Court for a declaration that it is not liable to pay contribution under the E. S. I. Act, as demanded by Insurance Inspector. My learned Predecessor allowed said application. Holding that the Mill is not the principal employer in respect of workmen employed for the construction work and the workers so employed, were not employees within the meaning of Section 2(*9*) (*ii*) of the E. S. I. Act.

4. The Corporation challenged said decision before Hon'ble High Court *vide* First Appeal No. 214/1982. It was allowed with directions that the Corporation shall determine the contribution after giving opportunity to the Mill as well the contractor present Respondent No. 1.

5. Assistant Regional Director of the Corporation after hearing both parties passed order under section 45A of the E. S. I. Act determining the contribution and interest thereof and directed the Mill to pay Rs. 58,949 holding the mill as 'principal employer'.

6. It is case of the Mill that it has already disbursed Rs. 27,005.15 to Respondent No. 1 as per the terms of contract. It is then contended that the Mill is entitled to recover contribution amount from the immediate employer *i.e.* Respondent No. 1 as per section 41 of the E. S. I. Act. However, total amount payable to Respondent No. 1 is fully disbursed and the contribution cannot be recovered now. As such, first option of deducting contribution from the amount payable to the immediate employer is not available now. It is then contended that therefore, direction be given to Respondent Corporation to recover contribution and interest thereof from Respondent No. 1 it being the immidiate employer.

7. On above averments, the Applicant has prayed to direct Respondent No. 1 Corporation to recover the contribution and interest thereof from Respondent No. 1 and other consequential reliefs.

8. The Mill also filed interim Application (Exh. 2) to restrain the Corporation from recovering the amount in question, till decision of main application.

9. Respondent No. 1 filed his say (Exh. 8) to the interim application contending, at the outset that no relief is claimed against him and hence the interim application be dismissed. It then contended that he has filed Special Civil Suit No. 74/1982 in the Court of Civil Judge, Sr. Division, Kolhapur for settlement of accounts and the Mill ought to have included present claim in the counter claim made in said suit. In fact, the Mill is liable to pay Rs.1,67,370.61 to him.

10. Respondent No. 1 then filed another application (Exh.10) to delete his name contending that the Mill has not paid the contribution as required under section 41 of the E. S. I. Act. The Applicant Mill objected the said application *vide* Reply Exh. 13. Respondent No. 1 Corporation filed its written statement at Exh. 22 contending, *inter alia,* that it is primary responsibility of the Mill being the principal employer to pay contribution of all employees including the employees engaged through immediate employer and there is no provision in the E. S. I. Act to withhold payment of such contribution pending recovery thereof from the immediate employer. In fact, Mills liability to pay the contribution is not dependent or contingent upon recovery thereof from the immediate employer and the Mill cannot refuse to pay the contribution if the immediate employer is unwilling or unable to pay the same. As such, plea that entire amount is paid to Respondent No. 1 cannot be a legal ground to withhold payment of the contribution. It is then contended that principal employer Mill can file an application against his immediate employer *i.e.* Respondent No. 1 under section 75(*2*)(*b*) of the E. S. I. Act only after paying the contribution and the payment thereof is a condition precedent for invoking provisions of Section 75(*2*) (*b*) of the E. S. I. Act. But the Mill has not paid the contribution and hence cannot invoke jurisdiction under section 75(*2*) (*b*) of the Act.

11. It is then contended by the Corporation that Mill has not deposited 50% amount claimed as provided under section 75 (*2*) (*b*) of the E. S. I. Act and the Application is liable to be dismissed on this count itself. It is further contended that the Mill is legally bound to pay the contribution in the first instance notwithstanding that it has paid all monies due to Respondent No. 1. Finally, the Corporation justified its action and prayed for dismissal of the Application.

12. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether Mill's claim is covered by provisions of Section 75 (*2*) (*b*) of the E. S. I. Act ?

(*ii*) Whether the Mill is entitled to directions to recover the contribution, interest etc. from Respondent No. 1 without firstly paying the same ?

(*iii*) What order ?

13. My findings on above points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) The Application is rejected.

Reasons

14. The factual position arising out of rival pleadings is no longer in dispute. It is material to note that the Mills has not challenged order of Assistant Regional Director passed under section 45 A of the E. S. I. Act nor disputed the amount of contribution and interest claimed therein. It is plain case of the Mill that immediate employer Respondent No. 1 is liable to pay the contribution, interest etc. and directions thereof be given to the Corporation Respondent No. 2 to recover said amount from the immediate employer Respondent No. 1.

15. The Mill has produced copies of contract dated 20th May 1975, decisions in Application (ESI) No. 2/77 and first Appeal No. 214/82 and order under section 45A, with list Exh. C-5. None of the parties have led oral evidence.

16. Section 40 of the E.S.I. Act provides that the principal employer shall pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution. Section 41 says that a principal employer, who has paid contribution in respect of employees employed by or through an immediate employer, shall be entitled to recover amount of contribution so paid from the immediate employer, either by deduction of any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer. Section 75(*2*) (*b*) of the Act says that claim by principal employer to recover contribution from any immediate employer, shall be decided by the Employee's Insurance Court.

17. A composite reading of above provisions make it crystal clear that it is primary responsibility of principal employer to pay contribution in first instance in respect of employees employed by or through an immediate employer and then shall be entitled to recover the amount and then the claim thereof needs to be decided by this Court. However, admittedly, the Mill has not paid the contribution, interest, etc. Therefore, present claim, at this stage, is not covered by provisions of section 75(*2*) (*b*) of the E.S.I. Act. In other words, the Mill cannot evade its liability to pay contribution in first instance contending that the Corporation be directed to recover the same from Respondent No. 1. It ought to have deducted the amount of contribution while disbursing the amounts paid to Respondent No. 1 Accordingly, I answer Point No. 1 in the negative.

18. It consequently follows that the Mill is not entitled to requisit direction as prayed. At the costs of repetition, I say that the Mill cannot disown its liability to pay contribution in the first instance and directly shifts its statutory liability upon Respondent No. 1. Accordingly, I answer Point No. 2 in the negative and pass following order :—

Order

(*i*) The Application is dismissed.

(*ii*) Parties to bear their costs.

C. A. JADHAV,
Judge,
Employee's Insurance Court, Kolhapur.

Kolhapur,
Dated the 21st November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

APPEAL (IC) No. 27 of 1999.—(1) The General Manager, The Deccan Co-op. Spinning Mills Ltd, Station Road, Jawahar Nagar, Ichalkaranji, (2) Liquidator/Collector, Kolhapur District, kolhapur, for Deccane Co-op. Spn. Mills Ltd. —*Appellant.—Versus*— (*i*) Shri Bharat Sheshappa Chougule, since deceased his heirs brought on record as- (i) Smt. Vimal Bharat Chougule, (*ii*) Kum. Shital Bharat Chougule, (*iii*) Kum. Sachin Bharat Chougule, At Post Rukadi, Taluka Hatakangale, District Kolhapur.—*Respondent.*

In the matter of Appeal u/s. 84 of the BIR Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri S. L. Pise, Advocate for the Mills.

Shri D. S. Desai, Advocate for the Liquidator.

Shri M. S. Topkar and Shri D. N. Patil, Advocate for Respondents.

Judgement

(*Dictated in Open Court*)

This Appeal was originally filed by an Employer Spinning Mill under section 84 of the BIR Act, challenging legality of judgement and order passed in Application (BIR) No. 24/84 by Labour Court, Kolhapur. Whereby the Mill is directed to pay 40 months wages, in liue of reinstatement to heirs of its employee original Applicant holding that punishment of discharge is improper.

2. Pending the appeal, the Government appointed a liquidator as the Mill was permanently closed. Consequently, the Liquidator was arrayed as Appellant No. 2.

3. It is an admitted position that original Applicant Shri Chougule was in employment of the Mill since the year 1972. He was served with chargesheet dated 12th June 1984 alleging misconduct under Standing Order No. 23 (*b*) and 23(*1*) of Mills Standing Order. Then an enquiry took place. He was discharged from service by order dated 20th July 1984. He expired on 18th February 1996 pending original proceeding and his heirs were brought on record. It was case of the original Applicant that he was elected as office bearer of representative and approved union, thus was a protected employee and no action could have been taken against him without complying relevant provisions of the BIR Act. It is then contended that allegations made in the chargesheet regarding instigating the workers to resort to illegal strike and commission of act of subversive of discipline, are not proved in the enquiry and findings of the Enquiry Officer are perverse. In fact, alleged strike was never declared as illegal by the competent authority and charge of illegal strike automatically fails. It was then contended that the Mill was informed about the demand of house rent allowance and it was resolved to observe a taken strike on 5th June 1984 in support thereof. It was further contended that his past record was clean but same is totally ignored. Finally, he prayed for reinstatement with continuity of service and full back wages.

4. The Mill filed written statement at Exh. C-9 contending, at the outset that original applicant was neither a protected employee nor was elected office bearer, of the Union. It then contended that original Applicant and one Shri Mujawar left their place of working on 5th June 1984, visited premises of 'B' Unit and instigated the workers therein to stop the work and personally stopped the machines by switching of the electric meters in 'B' Unit. Therefore, a chargesheet was served and he was terminated as committed a misconduct under Standing Order No. 23(*1*) of the Standing Order. It was also contended that services of the Applicant are not terminated on the ground of commiting misconduct under Standing Order No. 24(*b*). As such, it was not necessary to get the declaration of illegal strike. It is then contended that original Applicant is gainfully employed and has other source of income to maintain himself and his family. Finally, the Mill justified its action and prayed for dismissal of the application.

5. The parties then went to the trial. Original Applicant did not lead evidence *vide* pursis Exh. 31 and admitted *vide* pursis Exh. 26 that the enquiry was fair and proper. The Mill produced entire enquiry papers. It too did not lead oral evidence.

6. Learned Labour Court on perusal of evidence and hearing both parties held that the original Applicant was not a "protected employee" and findings of the Enquiry Officer are legal and proper. However, it held that punishment is grossly disproportionate, and allowed the Application, as above, on 28th June 1999.

7. I heard both Advocates at length. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned finding that termination of original Applicant is grossly disproportionate punishment, is legal and proper ?

(*ii*) what order ?

8. My findings on above points, are as under :—

(*i*) No,

(*ii*) The Appeal is dismissed.

Reasons

9. I must state at the threshold that heirs of original Applicant have not challenged the finding that findings of the Enquiry Officer are legal and proper. Even otherwise, I find that learned Labour Court has elaborately discussed said aspect and has rightly accepted findings of the Enquiry Officer.

10. Shri Desai, learned Advocate representing Appellant No. 2. liquidator vehemently argued that proved misconduct under Standing Order No. 24(1) *i.e.* commission of any act sub-versive of discipline or good behaviour on the premises of the establishment is not a misconduct of a minor or technical nature. The fact that original Applicant instigated workers of 'B' Unit and personally switched of eletric meter in that Unit, cannot be ignored. However, the Labour Court extended misplaced sympathy and was much swayed due to death of original Applicant. It is stated in order of punishment that punishment of dismissal was proper. However it was commutted by Mill itself. As such, the Labour Court exceeded its jurisdiction by granting unwarranted sympathy.

11. Shri D. N. Patil, learned Advocate representing heirs of original Applicant countered above arguments and replied that alleged misconduct under Standing Order No. 24(b) cannot be considered at all firstly because the Mill did not take steps for getting alleged strike declared as illegal and secondly, it is specifically pleaded in paragraph No. 11 of Written Statement that original Applicant is never terminated for misconduct under Stading Order No. 24(*b*). Therefore, the only charge proved is under standing order No. 24 (1), which is not so serious warranting discharge. The applicant was in employment since the year 1972 and his past record must be considered. As such, learned Labour Court has rightly held that punishment is grossly dispropotionate.

12. It is observed in *Sadhana Textile (P) Ltd*. Versus *Gulabchand Gayadin and Ors. reported in 1993 II CLR at page 512 (Bom H. C.)* that powers of Courts under section 78 (*1*) of the BIR Act are restricted to decide the propriety or legality of the order passed by an employer acting under the Standing Order. It is held in *Brihan Mumbai Municipal Corporation* Versus *General Secretary, Best Workers Union and Ors. reported* in *2002* (*2*) *Bom. L. C. 355 (Bom. H. C.)* that punishment or penalty must be commensurate with the charge levelled against the employee or the worker. It is further observed that Judicial Officer has to consider judiciously the question of propriety of punishment after considering all facts and circumstances, evidence and material on record and the punishment cannot be is disproportionate to shock the concious of the Court or any reasonable manner.

13. Learned Labour Court has observed that charge of misconduct under Standing Order No. 23(b) is dropped for the reason that the Mill has not sought declaration that the strike is illegal. It then observed that punishment of discharge, in the peculiar facts and circumstances of the case, is on higher side and is grossly dispropotionate' Considering judicious test of a reasonable man', in my judgment, learned Labour Court has rightly held the punishment to be improper. Considering period of previous employment of original Applicant, no prudent employer will impose punishment of discharge for the proved misconduct. It is not case of the Mill that proved misconduct has malign its immage and the other employees have committed similar misconduct. I, therefore, find that learned Labour Court is well justified in holding that the punishment is improper. Consequently, no interference is warranted in the Appeal. Accordingly, I answer Point No. 1 in the negative and pass following order :—

Order

(*i*) The Appeal is dismissed.

(*ii*) The parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 24th November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 314 of 1996.—Deputy Engineer, Minor Irrigation Sub-Division, Panchayat Samiti, Jath, District Sangli.—*Rev. Applicant.*—*Versus*— Shri Rauba Dhara Kulal, R/o. Khadanal, Taluka Jath, District Sangli.—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.—C. A. Jadhav, Member.

Appearances.—Shri D. J. Mangsule, Assistant Government Pleader for the Rev. Applicant.

Shri K. D. Shinde, Advocate for the Respondent.

Judgement

This is a Revision by Original Respondent deputy Engineer of Minor Irrigation Department, Sangli, challenging legality of judgement and order passed in Complaint (ULP) No. 569/90 by Labour Court, Sangli, whereby he is directed to reinstate original Complainant muster assistant, with continuity of service but, without back wages.

2. Present respondent (herein after referred to as Complainant) filed above complaint, *inter alia* contending that he worked from 1st April 1973 to 31st December 1973 and 13th March 1973 to 31st January 1988 and thus, put continuous service for more than 240 days in each year. However, he is terminated on 31st January 1988 on the false grounds as well as by violating mandatory provisions of Section-25F of Industrial Disputes Act. He then alleged that present Petitioner has engaged in an unfair labour practice under section 28 (*1*), under items 1(a), (b), (d) and (f) of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Finally, he prayed for reinstatement with continuity of service and full back wages.

3. The deputy Engineer filed his written statement at Exh. C-6 contending that the Complainant was employed as muster assistant under employment guarantee scheme as and when work was available and never put continuous service of 240 days in each year. In fact, the Complainant was appointed temporarily and it was not necessary to pay retrenchment compensation. He also raised a plea of limitation and finally, prayed for dismissal of the complaint.

4. Considering the rival pleadings the Labour Court framed issues at Exh. C-4 and parties went to the trial. The Complainant examined himself at Exh. U-10 and produced certificate dated 19th January 1985 of the deputy Engineer itself that he (Complainant) is working as muster assistant from 13th March 1974 till said date. The then Dy. Engineer Shri Sangmeshwarkar examined himself at Exh. C-14.

5. Learned Labour Court, on perusal of evidence and hearing both parties, firstly held that there are good and sufficient reasons for condonation of delay and condoned delay. It then relying upon deputy Engineer certificate (Exh. U-13), held that the Complainant has put continuous service of more than 240 days in each year. Finally, it held that Complainant's termination by violating mandatory provisions of Section 25F of I. D. Act, is an unfair labour practice and partly allowed complaint, as above.

6. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order of reinstatement with continuity of service but without back wares, warrants intereference ?

(*ii*) What order ?

7. My findings, on above points, are as under :—

(*i*) No,

(*ii*) The Revision Application is dismissed.

Reasons

8. This being a Revision under Section 44 of the M. R. T. U. and P. U. L. P. Act, it is not necessary to scrutinise rival pleadings meticulously. The only material question is whether the documents on record are incapable of supporting impugned decision order. In other words, whether impugned order is perverse or unjustifiable ?

9. Shri Mangsule, Learned Assistant Government Pleader representing deputy engineer tried to canvass that the Complainant was employed as and when work was available and hence, provisions of Section, 25F and 25G of the Industrial Disputes Act are not attracted. In reply, Shri K. D. Shinde, Learned Advocate representing Complainant stated that Section-25F of the I. D. Act is clearly attracted as the Complainant has worked for substantial years.

10. Section 25F of the I. D. Act makes no difference between temporary or permanent employee. The then deputy engineer has issued a certificate (Exh. U-13) that the Complainant is working as muster assistant from 13th March 1974 to 19th January 1985. Consequently, it cannot be accepted that he was employed as and when work was available. On the contrary it appears that he was employed to do work of perennial nature. Hence, his termination without following mandatory provisions of section 25F of the I. D. Act is bad in law. I therefore, find that Learned Labour Court has rightly allowed the complaint partly. To summaries, that impugned decision nowhere spells arbitrariness or perversity. On the contrary, there is every substance in its reasoning. Accordigly, I answer point No. 1 in the negative, and pass following order :—

Order

(*i*) The Revision Applications are dismissed.

(*ii*) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th December 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 265 of 2002.—Shri Dattatraya Dhondiram Hannure, Age 40, Occu. Service, R/o. A/p. Prayag Chikhali, Taluka Karveer, District Kolhapur.—*Complainant.*—*Versus*— (1) The Deputy Director of Health and Services, Kolhapur Circle, Kolhapur, (2) The District Inquiry Officer, Departmental Enquiry, Sadar Bazar Chowk, Royal Next Survey Colony, Kolhapur.—*Respondents.*

In the matter of Complaint u/s. 28 read with Item 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri D. M. Patil, Advocate for Complainant,

Shri S. R. Pisal Assistant Goverment Pleader for Respondent No. 1

No notice is ordered for Respondent No. 2.

Judgement

This is a complaint under section 28 (*1*) read with Items 9 and 10 Sch. IV of the M.R.T.U. and P. U. L. P. Act.

2. Admittedly, the Complainant is working under Respondent No. 1 from 23rd October 1991 on the post of a junior clerk, Respondent No. 1 served chargesheet dated 5th March 2002 upon the Complainant mainly alleging that he obtained employment by furnishing false certificate as well as by cheating the Government. Respondent No. 2 is the enquiry Officer. The Complainant made an application dated 22nd July 2002 to Respondent No. 1 disciplinary authority contending that misconducts attributed to him are serious and Complicated and he will not be in a position to personally defend himself in the enquiry and, therefore, he be permitted to engage an Advocate to represent him in the enquiry. Respondent No. 1 disciplinary authority refused such permission on the grounds that the presenting officer is neither a law graduate nor an advocate.

3. It is case of the Complainant that the presenting officer as well as the witnesses going to be examined against him are his superior officers and are well versed with the law and procedures of the departmental enquiry. On the contrary, he is simply a class-III employee and has no knowledge of all legal aspects and procedure of the departmental enquiry. As such, he cannot effectively cross-examine respective witnesses and defend himself without assistance of a legally trained person. It is further contended that charges leveled against him are not simple and serious and complex one, which may result into his dismissal. As such, he was in utter need of a legal practitioner to defend him in the enquiry. However, Respondent No. 1 disciplinary authority refused such permission by criptic and non-speaking order. It is then alleged that Respondent No. 1 has refused the permission by exercising his powers *malafidely* and his act is utter violation of principles of natural justice. His submissions in the application are not considered in legal manner and the permission is refused for no good or legal grounds. According to the Complainant, therefore, Respondent No. 1 has engaged in an unfair labour practice under items 9 and 10 of the Sch. IV of M.R.T.U. and P.U.L.P. Act. Finally, the Complainant has prayed for requisite declaration of unfair labour practice and other reliefs.

4. The Complainant also filed an application under section 30 (*2*) of the M.R.T.U. and P. U. L. P. Act, to stay his enquiry, till decision of main complaint.

5. Respondent No. 1 filed his say-*cum*-written statement at Exh. 5 contending that the Complainant approached Labour Court, Kolhapur, obtained interim relief therein and said complaint is still pending. The Complainant obtained employment by furnishing false documents and thereby cheated the Government. Collector of Kolhapur, after scrutinising the documents of the Complainant, has found that the Complainant was not entitled to get an employment. As such, he was rightly chargesheeted. It is then pleaded that presenting Officer is neither a law graduate

nor a legal Practitioner nor well versed with departmental enquiries. As such, rule-8 (8) of the Maharashtra Civil Services (Discipline and Appeal) Rules does not entitle the Complainant as of right to engage a legal Practitioner. Thus Respondent No. 1 justified his action and prayed for dismissal of the complaint.

6. Factual position is no longer in dispute. Therefore, as submitted by both Advocates, main complaint itself was taken for hearing. Considering rival pleadings, following issues were framed by me at Exh. C-3 :—

(*i*) Does the Complainant prove that he is entitled to engage legal Practitioner to represent and defend him in the departmental enquiry initiated against him ?

(*ii*) Does the Complainant prove that the Respondents have engaged in an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act ?

(*iii*) What order ?

7. My findings, on above issues, are as under :—

(*i*) Yes,

(*ii*) Yes,

(*iii*) Complaint is allowed.

Reasons

8. Factual position arising out of rival pleadings is not disputed. Complainant was employed on the ground that he is relative and a nominee of freedom fighter. He was then served with chargesheet dated 5th March 2002. Rule 8(8) of the Maharashtra Civil Services (Discipline and Appeal) 1979, is as under :—

The Government servant may take the assistance of any other Government servant (or retired Government servant) to present the case on his behalf, but may not engage a legal Practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal Practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

9. Plain reading of above said Rule says that a Government servant has to apply to the disciplinary authority for the requisite permission. As such, objection of learned Assistant Government Pleader that the Complainant ought to have applied for permission with the Enquiry Officer, is not tenable.

10. Shri Patil, Learned Advocate representing Complainant argued that disciplinary authority can permit a Government servant to engage a legal Practitioner having regard to the circumstances of the case and it is not a condition precedent that the Presenting Officer must be a legal Practitioner. In support of his argument he relied on the decision in *Rajkot District Panchayat* Versus *Mansukhlal Dalichand Mehta,* reported in 1991-II-CLR Page 969. He further argued that the charges are serious and complex which can result into an order of dismissal. As such, it was fair and reasonable on the part of Respondent No. 1 to allow Complainant to be defended by a legal Practitioner. For that end, he relied on the decisions in *N. Balsubramaniam* Versus *Can Bank Financial Services Ltd. (1996(74) F. L. R. 2047)* and *Neeta J. Mehta (Smt.)* Versus *Valsad-Dang Gramin Bank Ltd.* (1996-II-CLR-587).

11. Shri Pisal, learned A. G. P. representing Respondent No. 1 replied that charges leveled against the Complainant are simple and not complex. The Presenting Officer is not well versed with law or domestic enquiry and therefore, the permission is rightly refused. He further submitted that the Complainant cannot engage a legal Practitioner unless the Presenting Officer is a legal practitioner. For that end, he relied on decision in *J. R. Dani* Versus *State of Maharashtra and Ors*. reported in 2000 (1) Mh. L. J. Page-103. He also placed reliance on decisions of Apex Court in *Harinarayan Shrivastav* Versus *United Comercial Bank Ltd*. reported in 1997-II-CLR Pg. 16.

12. It is held in *Chandrakant Dethpande* Versus *Government of Maharashtra and Ors.* Reported in 1990 I-ClR Page-34 (Bombay High Court-Div. Bench) that the term legal Practitioner cannot be contrued narrowly and it will be enough, if the presenting officer without being a legal Practitioner is of legally tranined mind that his ability and vast experience as a prosecutor in domestic enquiry matters, As such, facts and circusmtances of each case will have to be construed.

13. It is observed in the decisions in *N. Balsubramanian* Versus *Can Bank Financial Services Ltd.* and *Neeta J. Mehta (Smt.)* Versus V*alad Dang-Gramin Bank Ltd.* referred above that if charges framed against delinquent can result into an order of dismissal are complex and serious one, then a delinquent can engage a legal Practitioner to represent him. In the present case, it cannot be accepted that the charges leveled against the Complainant are simple and not complex. On the contrary, they are serious and complex one and may result into dismissal, if proved.

14. Various decisions of Hon'ble Apex Courts are considered and referred in J. R. Dani's case. In that case, their Worships have held that the charges framed against the Petitioner therein, were not of such a nature as to require any legal assistance, I am respectfully bound by the observations of their Lordships in J. R. Dani's Case. The entire discussions is primarily based on the ground that charges framed were no complex or complicated one, Petitioner therein was legal Practitioner, then Asstt. Public frogecutor and Judge and thereby well versed with legal aspect, has cross-examined respective witneses at length as well as effectively and no presenting officer was appointed on behalf of the Disciplinery Authority.

15. It is observed by His Lordship in paragraphs No. 12 of the judgement that appliation of Petitioner seeking permission to engage a legal Practitioner was refused by the Hon'ble High Court on the ground that charges levelled against him were not complicated and that no Presenting Officer was appointed for conducting departmental enquiry. It is further observed in paragraph No. 23 of the judgement that unless a Presenting Officer is appointed, no question of allowing the delinquent to engage legal Practitioner to defend himself, arises.

16. In the case of *C. L. Subramaniam* Versus The *Collector of Customs, Cochin reported in AIR 1972 (Supreme Court) page-2178,* it is observed that the Government Servants by and large, have n legal training. Norcover, when a man is charged with the breach of a rule entailing serious consequences, he will not be in a position to present his case, as best as it should be. It was pointed out that, therefore, Rule,-15 (5) of the Central Civil Services (Classification, Control and Appeal) Rules provided for representation by a Government servant charged with drelication of duty or with a contravention of the rule by another Government servant or in appropriate cases, by a legal Practitioner.

17. With respect to Hon'ble High Court, I am of the opinion that observation in J. R. Dani's case, are not applicable to this case, as the Complainant herein, is charged with servious and complex charges, which may result into his dismissed and he simply a matriculate person. On the contrary, one Presenting Officer is appointed in his departmental enquiry. As such, in the light of observations in paragraph No. 23 of J. R. Dani's case, question of engaging legal Practitioner do arise, when a Presenting Officer is appointed. Second part of Rule-8(8) of Maharashtra Civil Services (Discipline and Appeal procedure) Rules 1969 is very material. It says that disciplinary authority having regard to circumstances of the case, may permit a Government servant to take assistance of any of the Government servant or to engage a legal Practitioner. Learned Assistant Government Pleader is much relying upon technicalities than merits. In my judgement, the Respondent will not be prejudiced if the Complainant is allowed to represent him in the departmental enquiry by a legal Practitioner.

18. It also needs to be considered that the Complainant is a Class-III employee and the witnesses cited against him are high officials. Seriousness and complexity of the charges levelled against him require assistance of legal expert and therefore, the Complainant is well justified in claiming permission to engage legal Practitioner to defend him. Respondent No. 1 disciplinary authority, has unnecessarily rejected permission although there is no legal reason for refusing

the same. It is not case of the Respondent No. 1 that the Complainant is well versed with law and procedure of departmental enquiry. As such, natural justice warrants grant of permission to the Complainant to engage a legal Practitioner to represent and defend him in the enquiry. Respondent No. 1 will not be prejudiced, if the Complainant is permitted to engage an Advocate. Thus, in the totallty of the circumstances, I hold than Respondent No. 1 disciplinary authority was not justified in refusing to grant the requisite permission. On the contrary, it ought to have granted permission. I therefore, hold that Respondent No. 1 has failed to exercise his powers in proper perspective, and thereby engaged in an unfair labour practice under items 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Accordingly, I answer issue Nos. 1 and 2 in the affirmative and pass following order.

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that Respondent No. 1 Disciplinary Authority has engaged in an Unfair Labour Practice under items 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

(*iii*) Respondent No. 1 is directed to cease and desist from engaging in such unfair laboure practice forthwith.

(*iv*) Respondent No. 1 is directed to permit the Complainant to engage a legal Practitioner of his choice to represent and defend him in the enquiry, initiated against him.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court Kolhapur.

Kolhapur,
Dated the 10th December 2003.

V. D. PARDESHI,
Registrar,
Industrial Court Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 266 of 2002.—Shri Chandrakant Ramchandra More Age : 39 Occu. Service, R/o. 2313, D. Ward, Shukrawarpeth, Kolhapur.—*Complainant.*—*Versus*— 1. The Deputy Director of Health and Services, Kolhapur circle, Kolhapur. 2. The District Inquiry Officer, Departmental Enquiry, Sadar Bazar Chowk, Royal Nest Survey Colory, Kolhapur.—*Respondents.*

In the matter of Complaint u/s. 28 read with Item 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri D. M. Patil, Advocate for Complainant.

Shri S. R. Pisal, Assistant Government Pleader for Respondent No. 1.

No notice is ordered for Respondent No. 2

Judgement

This is a complaint under section 28 (1) read with Items 9 and 10 Sch. IV of the M. R. T. U. and P. U. L. P. Act.

2. Admittedly, the Complainant is working under Respondent No. 1 from 15th July 1992 on the post of a junior clerk. Respondent No. 1 served chargesheet dated 5th March 2002 upon the Complainant mainly alleging that he obtained employment by furnishing false certificate as well as by cheating the government. Respondent No. 2 is the Enquiry Officer. The Complainant made an application dated 22nd July 2002 to Respondent No. 1 disciplinary authority contending that misconducts attributed to him are serious and complicated and he will not be in a position to personally defend himself in the enquiry and, therefore, he be permitted to engage an Advocate to represent him in the enquiry. Respondent No. 1 disciplinary authority refused such permission on the grounds that the Presenting Officer is neither a law graduate nor an Advocate.

3. It is case of the Complainant that the Presenting Officer as well as the witnesses going to be examined against him are his Superior Officers and are well versed with the law and procedures of the departmental enquiry. On the contrary, he is simply a Class-III employee and has no knowledge of all legal aspects and procedure of the departmental enquiry. As such, he cannot effectively cross-examine respective witnesses and defend himself without assistance of a legally trained person. It is further contended that charges levelled against him are not simple but serious and complex one, which may result into his dismissal. As such, he was in utter need of a legal practitioner to defend him in the enquiry. However, Respondent No. 1 disciplinary authority refused such permission by criptic and non-speaking order. It is then alleged that Respondent No. 1 has refused the permission by exercising his powers *malafidely* and his act is utter violation of principles of natural justice. His submissions in the application are not considered in legal manner and the permission is refused for no good or legal grounds. According to the Complainant, therefore, Respondent No. 1 has engaged in an unfair labour practice under items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Finally, the Complainant has prayed for requisite declaration of an unfair labour practice and other reliers.

4. The Complainant also filed an application under section 30 (2) of the M. R. T. U. and P. U. L. P. Act, to stay his enquiry, till decision of main complaint.

5. Respondent No. 1 filed his say-cum-written-statement at Exh. 5 contending that the Complainant approached Labour Court, Kolhapur, obtained interim relief therein and said complaint is still pending. The Complainant obtained employment by furnishing false documents and thereby cheated the government. Collector of Kolhapur, after scrutinising the documents of the Complainant, has found that the Complainant was not entitled to get an employment. As such, he was rightly chargesheeted. It is then pleaded that Presenting Officer is neither a law graduate nor a legal Practitioner nor well versed with departmental enquiries. As such, Rule-8 (8) of the Maharashtra Civil Services (Discipline and Appeal) Rules does entitle the Complainant, as of right, to engage a legal practitioner. Thus Respondent No. 1 justified his action and prayed for dismissal of the complaint.

6. Factual position is no longer in dispute. Therefore, as submitted by both Advocates, main complaint itself was taken for hearing. Considering rival pleadings, following issues were framed by me at Exh. 0-3 :—

(*i*) Does the Complainant prove that he is entitled to engage legal Practitioner to represent and defend him in the departmental enquiry initiated against him ?

(*ii*) Does the Complainant prove that the Respondents have engaged in an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act ?

(*iii*) What order ?

7. My findings, on above issues, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) Complaint is allowed.

Reasons

8. Factual position arising out of rival pleadings is not disputed. Complainant was employed on the ground that he is relative and a nominee of freedom fighter. He was then served with chargesheet dated 5th March 2002. Rule 8(8) of the Maharashtra Civil Services (Discipline and Appeal) 1979, is as under :

The Government servant may take the assistance of any other Government servant (or retired Government servant) to present the case on his behalf, but may not engage a legal Practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal Practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

9. Plain reading of above said Rule says that a Government servant has to apply to the disciplinary authority for the requisite permission. As such, objection of learned Assistant Government Pleader that the Complainant ought to have applied for permission with the Enquiry Officer, is not tenable.

10. Shri Patil, learned Advocate representing Complainant argued that disciplinary authority can permit a government servant to engage a legal Practitioner having regard to the circumstances of the case and it is not a condition precedent that the Presenting Officer must be a legal Practitioner. In support of his argument he relied on the decision in *Rajkot District Panchayat* Versus *Mansukhlal Dalichand Mehta.* Reported in 1991 II CLR Page 969. He further argued that the charges are serious and complex which can result into an order of dismissal. As such, it was fair and reasonable on the part of Respondent No. 1 to allow Complainant to be defended by alegal Practitioner. For that end, he relied on the decisions in *N. Balsubramaniam* Versus *Can Bank Financial Services Ltd. (1996(74) F. L. R. 2047)* and *Meeta J. Mehta (Smt.)* Versus *Valsad-Dang Gramin Bank Ltd.* (1996 II CLR-587).

11. Shri Pisal, learned A. G. P. representing Respondent No. 1 replied that charges levelled against the Complainant are simple and not complex. The Presenting Officer is not well versed with law or domestic enquiry and therefore, the permission is rightly refused. He further submitted that the Complainant cannot engage a legal Practitioner unless the Presenting Officer is a legal Practitioner. For that end, he relied on decision in *J. R. Dani* Versus *State of Maharashtra and Ors*. reported in 2000 (1) Mh. L. J. Page-103. He also placed reliance on decisions of Apex Court in *Harinarayanan Shrivastav* Versus *United Comercial Bank Ltd*. reported in 1997 II CLR Pg.-16.

12. It is held in *Chandrakant Deshpande* Versus *Government of Maharashtra and Ors.* Reported in 1990 I-CLR Page-34 (Bombay High Court-Div. Bench) that the term legal practitioner cannot be contrued narrowly and it will be enough, if the Presenting Officer without being a legal Practitioner is of legally tranined mind that his ability and vast experience as a prosecutor in domeetic enquiry matters, As such, facts and circusmtances of each case will have to be construed.

13. It is observed in the decisions in *N. Balsubramaniam* Versus *Can Bank Financial Services Ltd.* and *Meeta J. Mehta (Smt.)* Versus V*alsad Dang-Gramin Bank Ltd.* referred above that if charges framed against delinquent can result into an order of dismissal, are complex and serious one, then a delinquent can engage a legal practitioner to represent him. In the present case, it cannot be accepted that the charges levelled against the Complainant are simple and not complex. On the contrary, they are serious and complex one and may result into dismissal, if proved.

14. Various decisions of Hon'ble Apex Courts are considered and referred in J. R. Dani's case. In that case, their Lordships have held that the charges framed against the Petitioner therein, were not of such a nature as to require any legal assistance, I am respectfully bound by the observations of their Lordships in J. R. Dani's Case. The entire discussions is primarily based on the ground that charges framed were not complex or complicated one, Practitioner therein was legal Practitioner, then Asstt. Public Prosecutor and Judge and thereby well versed with legal aspect, has cross-examined respective witneses at length as well as effectively and no Presenting Officer was appointed on behalf of the Disciplinary Authority.

15. It is observed by His Lordships in paragraph No. 12 of the judgement that application of Petitioner seeking permission to engage a legal Practitioner was refused by the Hon'ble High Court on the ground that charges levelled against him were not complicated and that no Presenting Officer was appointed for conducting departmental enquiry. It is further observed in paragraph No. 23 of the judgement that unless a Presenting Officer is appointed, no question of allowing the delinquent to engage legal Practitioner to defend himself, arises.

16. In the case of *C. L. Subramaniam* Versus *The Collactor of Customs, Cochin reported in AIR 1972* (Supreme Court) page-2178, it is observed that the Government Servants by and large, have no legal training. Moreover, when a man is charged with the breach of a rule entailing serious consequences, he will not be in a position to present his case, as best as it should be. It was pointed out that, therefore, Rule-15 (5) of the Central Civil Services (Classification, Control and Appeal) Rules provided for representation by a Government servant charged with drelication of duty or with a contravention of the rule by another Government servant or in appropriate cases, by a legal Practitioner.

17. With respect to Hon'ble High Court, I am of the opinion that observation in J. R. Dani's case are not applicable to this case, as the Complainant herein, is charged with servious and complex charges, which may result into his dismissal and he is simply a matriculate person. On the contrary, one Presenting Officer is appointed in his departmental enquiry. As such, in the light of observations in paragraph No. 23 of J. R. Dani's case, question of engaging legal Practitioner do arise, when a Presenting Officer is appointed. Second part of Rule-8(8) of Maharashtra civil services (Discipline and Appeal procedure) Rules, 1969 is very material. It says that disciplinary authority having regard to circumstances of the case, may permit a Government servant to take assistance of any of the Government servant or to engage a legal Practitioner. Learned Assistant Government Pleader is much relying upon technicalities than merits. In my judgement, the Respondent will not be prejudiced if the Complainant is allowed to represent him in the departmental enquiry by a legal Practitioner.

18. It also needs to be considered that the Complainant is a Class-III employee and the witnesses cited against him are high officials. Seriousness and complexity of the charges levelld against him require assistance of legal expert and therefore, the Complainant is well justified in claiming permission to engage legal Practitioner to defend him. Respondent No. 1 disciplinary authority, has unnecessarily rejected permission although there is no legal reason for refusing the same. It is not case of the Respondent No. 1 that the Complainant is well versed with law and procedure of departmental enquiry. As such, natural justice warrants grant of permission to the Complainant to engage a legal Practitioner to represent and defend him in the enquiry. Respondent No. 1 will not be prejudised, if the Complainant is permitted to engage an Advocate. Thus, in the totality of the circumstances, I hold than Respondent No. 1 disciplinary authority

was not justified in refusing to grant the requisite permission. On the contrary, it ought to have granted permission. I therefore, hold that Respondent No. 1 has failed to exercise his powers in proper perspective, and thereby engaged in an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Accordingly, I answer issue Nos. 1 and 2 in the affirmative and pass following order.

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that Respondent No. 1 Disciplinary Authority has engaged in an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) Respondent No. 1 is directed to cease and desist from engaging in such unfair laboure practice forthwith.

(*iv*) Respondent No. 1 is directed to permit the Complainant to engage a legal Practitioner of his choice to represent and defend him in the enquiry, initiated against him.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th December 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 267 of 2002.—Shri Kishor Suryajirao Salokhe, Age 30 Occu. Service, R/o. 1541/B, Mangalwarpeth, Kolhapur.—*Complainant.*—*Versus*— (1) The Deputy Director of Health Services, Kolhapur Circle, Kolhapur, (2) The District Inquiry Officer, Departmental Enquiry, Sadar Bazar Chowk, Royal Nest Survey Colony, Kolhapur.—*Respondents.*

In the matter of Complaint u/s. 28 read with Items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri D. M. Patil, Advocate for Complainant.

Shri S. R. Pisal, Assistant Government Pleader for Respondent No. 1.

No notice is ordered for Respondent No. 2.

Judgement

This is a complaint under section 28 (*1*) read with Items 9 and 10 Sch. IV of the M.R.T.U. and P. U. L. P. Act.

2. Admittedly, the Complainant is working under Respondent No. 1 from 17th January 1992 on the post of a Junior Clerk. Respondent No. 1 served chargesheet dated 5th March 2002 upon the Complainant mainly alleging that he obtained employment by furnishing false certificate as well as by cheating the Government. Respondent No. 2 is the Enquiry Officer. The Complainant made an application dated 22nd July 2002 to Respondent No. 1 disciplinary authority contending that misconducts attributed to him are serious and complicated and he will not be in a position to personally defend himself in the enquiry and, therefore, he be permitted to engage an Advocate to represent him in the enquiry. Respondent No. 1 disciplinary authority refused such permission on the grounds that the Presenting Officer is neither a law graduate nor an Advocate.

3. It is case of the Complainant that the Presenting Officer as well as the witnesses going to be examined against him are his Superior Officers and are well versed with the law and procedures of the departmental enquiry. On the contrary, he is simply a Class-III employee and has no knowledge of all legal aspects and procedure of the departmental enquiry. As such, he cannot effectively cross-examine respective witnesses and defend himself without assistance of a legally trained person. It is further contended that charges levelled against him are not simple but serious and complex one, which may result into his dismissal. As such, he was in utter need of a legal Preactitioner to defend him in the enquiry. However, Respondent No. 1 disciplinary authority refused such permission by Criptic and non-speaking order. It is then alleged that Respondent No. 1 has refused the permission by exercising his powers *malafidely* and his act is utter violation of principles of natural justice. His submissions in the application are not considered in legal manner and the permission is refused for no good or legal grounds. According to the Complainant, therefore, Respondent No. 1 has engaged in an unfair labour practice under items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Finally, the Complainant has prayed for requisite declaration of an unfair labour practice and other reliefs.

4. The Complainant also filed an application under section 30 (*2*) of the M. R. T. U. and P. U. L. P. Act, to stay his enquiry, till decision of main complaint.

5. Respondent No. 1 filed his say-*cum*-written-statement at Exh. 5 contending that the Complainant approached Labour Court, Kolhapur, obtained interim relief therein and said complaint is still pending. The Complainant obtained employment by furnishing false documents and thereby cheated the Government. Collector of Kolhapur, after scrutinising the documents of the Complainant, has found that the Complainant was not entitled to get an employment. As such, he was rightly chargesheeted. It is then pleaded that Presenting Officer is neither a law graduate nor a legal Practitioner nor well versed with departmental enquiries. As such, Rule-8 (8) of the Maharashtra Civil Services (Discipline and Appeal) Rules does entitle the Complainant, as of right, to engage a legal Practitioner. Thus Respondent No. 1 justified his action and prayed for dismissal of the complaint.

6. Factual position is no longer in dispute. Therefore, as submitted by both Advocates, main complaint itself was taken for hearing. Considering rival pleadings, following issues were framed by me at Exh. O-3 :—

(*i*) Does the Complainant prove that he is entitled to engage legal practitioner to represent and defend him in the departmental enquiry initiated against him ?

(*ii*) Does the Complainant prove that the Respondents have engaged in an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act ?

(*iii*) What order ?

7. My findings, on above issues, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) Complaint is allowed.

Reasons

8. Factual position arising out of rival pleadings is not disputed. Complainant was employed on the ground that he is relative and a nominee of freedom fighter. He was then served with chargesheet dated 5th March 2002. Rule 8(8) of the Maharashtra Civil Services (Discipline and Appeal) 1979, is as under :—

The Government servant may take the assistance of any other Government servant (or retired Government servant) to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

9. Plain reading of above said Rule says that a Government servant has to apply to the disciplinary authority for the requisite permission. As such, objection of Learned Assistant Government Pleader that the Complainant ought to have applied for permission with the Enquiry Officer, is not tenable.

10. Shri Patil, Learned Advocate representing Complainant argued that disciplinary authority can permit a Government servant to engage a legal practitioner having regard to the circumstances of the case and it is not a condition precedent that the Presenting Officer must be a legal Practitioner. In support of his argument he relied on the decision in *Rajkot District Panchayat* Versus *Mansukhlal Dalichand Mehta.* Reported in 1991 II CLR Page 969. He further argued that the charges are serious and complex which can result into an order of dismissal. As such, it was fair and reasonable on the part of Respondent No. 1 to allow Complainant to be defended by a legal practitioner. For that end, he relied on the decisions in *N. Balsubramanian* Versus *Can Bank Financial Services Ltd. (1996 (74) F. L. R. 2047)* and *Meeta J. Mehta (Smt.)* Versus *Valsad-Dang Gramin Bank Ltd.* (1996 II CLR-587).

11. Shri Pisal, Learned A. G. P. representing Respondent No. 1 replied that charges levelled against the Complainant are simple and not complex. The Presenting Officer is not well versed with law or domestic enquiry and therefore, the permission is rightly refused. He further submitted that the Complainant cannot engage a legal Practitioner unless the Presenting Officer is a legal practitioner. For that end, he relied on decision in *J. R. Dani* Versus *State of Maharashtra and Ors*. reported in 2000 (1) Mh. L. J. Page-103. He also placed reliance on decisions of Apex Court in *Harinarayan Shrivastav* Versus *United Comercial Bank Ltd*. reported in 1997 II-CLR Page-16.

12. It is held in *Chandrakant Deshpande* Versus *Government of Maharashtra and Ors*. Reported in 1990 I-CLR Page-34 (Bombay High Court-Div. Bench) that term legal Practitioner cannot be construed narrowly and it will be enough, if the Presenting Officer without being a legal Practitioner is of legally tranined mind that his ability and vast experience as a prosecutor in domestic enquiry matters, As such, facts and circusmtances of each case will have to be construed.

13. It is observed in the decisions in *N. Balsubramanian* Versus *Can Bank Financial Services Ltd.* and *Meeta J. Mehta (Smt.)* Versus V*alsad Dang-Gramin Bank Ltd.* referred above that if charges framed against delinquent can result into an order of dismissal are complex and serious one, then a delinquent can engage a legal practitioner to represent him. In the present case, it cannot be accepted that the charges levelled against the Complainant are simple and not complex. On the contrary, they are serious and complex one and may result into dismissal, if proved.

14. Various decisions of Hon'ble Apex Courts are considered and referred in J. R. Dani's case. In that case, their Lorships have held that the charges framed against the Petitioner therein, were not of such a nature as to require any legal assistance, I am respectfully bound by the observations of their Lordships in J. R. Dani's Case. The entire discussions is primarily based on the ground that charges framed were not complex or complicated one, Petitioner therein was legal practitioner, then Asstt. Public Prosecutor and Judge and thereby well versed with legal aspect, has cross-examined respective witneses at length as well as effectively and no Presenting Officer was appointed on behalf of the Disciplinary Authority.

15. It is observed by his Lordship in paragraph No. 12 of the judgement that application of Petitioner seeking permission to engage a legal practitioner was refused by the Hon'ble High Court on the ground that charges levelled against him were not complicated and that no Presenting Officer was appointed for conducting departmental enquiry. It is further observed in paragraph No. 23 of the judgement that unless a Presenting Officer is appointed, no question of allowing the delinquent to engage legal practitioner to defend himself, arises.

16. In the case of *C. L. Subramaniam* Versus *The Collector of Customs, Cochin reported in AIR 1972* (Supreme Court) page-2178, it is observed that the Government Servants by and large, have no legal training. Moreover, when a man is charged with the breach of a rule entailing serious consequences, he will not be in a position to present his case, as best as it should be. It was pointed out that, therefore, Rule-15 (5) of the Central Civil Services (Classification, Control and Appeal) Rules provided for representation by a Government servant charged with drelication of duty or with a contravention of the rule by another Government servant or in appropriate cases, by a legal Practitioner.

17. With respect to Hon'ble High Court, I am of the opinion that observation in J. R. Dani's case, are not applicable to this case, as the Complainant herein, is charged with serious and complex charges, which may result into his dismissal and he simply a matriculate person. On the contrary, one Presenting Officer is appointed in his departmental enquiry. As such, in the light of observations in paragraph No. 23 of J. R. Dani's case, question of engaging legal practitioner do arise, when a Presenting Officer is appointed. Second part of Rule-8(8) of Maharashtra Civil Services (Discipline and Appeal procedure) Rules 1969 is very material. It says that disciplinary authority having regard to circumstances of the case, may permit a Government servant to take assistance of any of the Government servant or to engage a legal Practitioner. Learned Assistant Government Pleader is much relying upon technicalities than merits. In my judgement, the Respondent will not be prejudiced if the Complainant is allowed to represent him in the departmental enquiry by a legal practitioner.

18. It also needs to be considered that the Complainant is a Class-III employee and the witnesses cited against him are high officials. Seriousness and complexity of the charges levelled against him require assistance of legal expert and therefore, the Complainant is well justified in claiming permission to engage legal practitioner to defend him. Respondent No. 1 disciplinary authority, has unnecessarily rejected permission although there is no legal reason for refusing the same. It is not case of the Respondent No. 1 that the Complainant is well versed with law and procedure of departmental enquiry. As such, natural justice warrants grant of permission to the Complainant to engage a legal practitioner to represent and defend him in the enquiry. Respondent No. 1 will not be prejudiced, if the Complainant is permitted to engage an Advocate. Thus, in the totality of the circumstances, I hold that Respondent No. 1 disciplinary authority was not justified in refusing to grant the requisite permission. On the contrary, it ought to have granted permission.

I therefore, hold that Respondent No. 1 has failed to exercise his powers in proper perspective, and thereby engaged in an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Accordingly, I answer issue Nos. 1 and 2 in the affirmative and pass following order.

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that Respondent No. 1 Disciplinary Authority has engaged in an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) Respondent No. 1 is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*) Respondent No. 1 is directed to permit the Complainant to engage a legal practitioner of his choice to represent and defend him in the enquiry, initiated against him.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court Kolhapur.

Kolhapur,
Dated the 10th December 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE HON'BLE MEMBER INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 288 of 1997.—Shri Kayyum Mohiddin Ambedkar, At and Post Savarde, Tal. Chiplun, District Ratnagiri.—*Complainant.*—*Versus*— (1) Divisional Traffic Officer, Maharashtra State Road Transport Corporation, Ratnagiri Division, Ratnagiri, (2) Divisional Controller, Maharashtra State Road Transport Corporation, Ratnagiri Division, Ratnagiri.—*Respondents.*

In the matter of Complaint u/s. 28 of Sch. IV, Items 9 and 10 of the M. R. T. U. and P. U. L. P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri M. K. Kadam, Advocate for Complainant.

Shri M. G. Badadare, Advocate for Respondents.

Judgement

This is a complaint alleging unfair labour practice under section 28 (*1*) read with Items 9 and 10 of Sch. IV of the M.R.T.U. and P. U. L. P. Act.

2. Admittedly, the Complainant is an employment of the Respondent-Maharashtra State Road Transport Corporation as a driver from the year 1986. He was on duty on 7th November 1994 on Awali-Chiplun route. He passed Sati stop at about 7-15 p.m. A cyclist was coming from opposite side and there was a collusion of the bus and the cycle. The cyclist succumbed to serious injuries while being taken to Karad for medical treatment. The Corporation then served chargesheet dated 27th April 1996 upon the Complainant, mainly alleging gross negligence and wilful damage. The Complainant denied the charges and then an enquiry took place. The Complainant was also prosecuted by police authorities. In the enquiry, the Corporation examined Shri Padalkar and relied upon the police statements and spot Panchanama. The Enquiry Officer found the Complainant guilty of the misconducts and awarded punishment of permanently withholding three increments, by order dated 27th February 1997. The Complainant preferred first departmental appeal and it was dismissed on 14th July 1997.

3. It is case of the Complainant that the cyclist coming from apposite side was on wrong side of the road and driving his cycle in a jigzag manner. He (Complainant) therefore, took the bus to right side of the road to save the cyclist. However, the cyclist lost his balance and straight way dashed to left front side of the bus. In fact left headlight of the bus was not working, when he took the bus for the trip and noted such fact in the log-sheet. There was a speed breaker prior to the place of incidence and right head lamp stopped working when the bus passed speed breaker. As such, it was dificult for him to save the cyclist coming from wrong side and that too in a zigzag manner. He was required to drive a defective vehicle. As such, it was purely an accident and no misconduct can be attributed to him. Besides, original log sheet wherein he put an endorsement was not called by the Enquiry Officer and the enquiry is contrary to the principles of natural justice. He further alleged that in such circumstances, findings of the Enquiry Officer are totally perverse. It is then contended that awarded punishment is totally unjustifiable and shockingly disproportionate, and the Corporation has engaged in an unfair labour practice.

4. On above averments the Complainant has prayed for declaration of an unfair labour practice to set aside the punishment order as well as order passed in first appeal and other consequential reliefs.

5. The Corporation filed its written statement at Exh. C-5 and traversed all material allegations made by the Complainant. It contended that there is no need to call log sheet of the bus as it was without defects. The Complainant ought to have reported to nearest depot if the head lamps was not working and should not have taken risk of driving the bus. In fact, the Complainant was totally rash and negligent in driving. Sufficient opportunity was given to the Complainant during the enquiry. As such, the enquiry is fair and proper. The Enquiry Officer, on perusal of entire evidence has recorded justifiable conclusion and rightly found the Complainant guilty and his findings are nowhere perverse. The punishment awarded is commensurate to the proved misconduct and there is no unfair labour practice by the corporation. Finally, the Corporation prayed for dismissal of the complaint.

6. Considering rival pleadings. Following issues were framed by me at Exh. O-1 :—

(*i*) Does the Complainant prove that his enquiry is in utter disregard of the principles of natural justice ?

(*ii*) Does he further prove that findings of the Enquiry Officer are perverse ?

(*iii*) If finding of issue No. 2 is in the affirmative. Whether the Corporation is entitled to lead evidence to justify its action ?

(*iv*) Does the Complainant prove that the Respondent-Corporation has engaged in unfair labour practice under item 9 of the Sch. IV of the M. R. T. U. and P. U. L. P. Act ?

(*v*) What order ?

7. My findings, on above Points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) Does not survive.

(*iv*) No.

(*v*) The Complaint is Dismissed.

Reasons

8. It is not in dispute that the Complainant was driving the bus at the relevant time, the cyclist coming from opposite side was dashed by the bus and succumbed to injuries, while being taken for medical treatment.

9. It is case of the Complainant that left head light was not working since beginning and the right head light stopped functioning after passing a speed breaker, just prior to the place of incidents. He filed his affidavit (Exh. U-7) in lieu of examination in chief and affirmed in terms of his pleadings.

10. The Corporation produced entire enquiry papers and Complainant's default card with list Exh. C-6. It did not lead oral evidence. The Complainant replied in the cross-examination the copies of requisite documents were delivered to him and statements of Assistant Traffic Superintendent Shri Padalkar was recorded in his presence. The enquiry papers shows that the Complainant declined to cross examine Shri Padalkar. His statement was recorded thereafter. He was also issued a showcause notice prior to awarding the punishment. In the circumstances, I have no difficulty to hold that the enquiry was in consequence with the principles of natural justice. Accordingly, I answer issue No. 1 in the negative.

11. Shri Kadam, learned Advocate representing the Complainant took me through cross examination of the reporter taken by the Enquiry Officer and pointed out that the reporter has admitted that vehicle inspector is equally responsible, due to his failure to verify as to whether both head light are in working condition. Unfortunately, the other head light also stopped working at the spot of incident. In the circumstances, it cannot be accepted that the Complainant was grossly negligent while driving the vehicle. But, the Enquiry Officer has mechanically accepted reporter's version and recorded a perverse findings, against the Complainant.

12. Shri Badadare, learned Advocate representing the Corporation replied that spot panchnama prepared by police is not disputed by the Complainant. It was found on the spot that there were break marks for a distance of 55 feets. The cyclist was dashed by left front portion of the bus and was dragged for a distance of 20 fts. The spot panchnama and the map shows the break marks, blood stains and situation of the bus. The Complainant ought to have complained while taking the bus for the trip, if its left headlight was realy not working. He was aware that he would require to drive the bus after sun set. At such, plea that left head light was not working is totally after thought. In fact, the break marks and the blood stains speaks voluminously and findings of the Enquiry Officer cannot said to be perverse.

13. The facts borne out from the spot panchnama and map prepared by police are self eloquent. The Complainant ought to have reported nearest depot or stopped the vehicle. If was unable to drive the vehicle, for want of proper functioning of lamps. But, it appears that he did not bother about the defects if any and was carelees. The very fact that there were break marks of 55 feet goes to show that bus was not in moderate speed, but in an uncontrollable speed. I must state that he ought to have lowered the speed at the minium on realising that the cyclist is coming from opposit side. However, he failed to take proper care. It has come in his cross examination that he was given special training regarding safe driving and hand book of said driving was also given to him. As such, he ought to have been more alert than the driver of any other goods vehicle. In the circumstances, he cannot dis-own his liability on the ground that left head light was not working. He ought to have called for log sheet before the Enquiry Officer or in this proceedings to substantiate his plea that the bus was defective since was taken by him for driving. In the circumstances. It cannot be accepted that findings of the Enquiry Officer are perverse. Findidngs can be held to be perverse, if, they are not supported by evidence or illogical. The spot panchnama is a self explanatory and positively establishes that the Complainant was grossly negligent while driving the bus. I therefore, hold that findings of the Enquiry Officer are well justifiable and not perverse. Accordingly, I answer issue No. 2 in the negative. It consequently follows that question permitting the Corporation to lead evidence to justify its action does not survive. I answer issue No. 3 accordingly.

14. Now turning to the question of punishment's quantum, Shri Kadam, learned Advocate representing the Complainant canvassed that stoppage of 3 increaments with cummulative effect amounts to substantial financial loss to the Complainant. The prime cause of the incident is failure of the vehicle inspector to remove the defect and delivering the bus as it is to the Complainant. However, no action is taken against him and the Complainant alone is punished. It amounts to legal victimisation. He fairly conceded that lesser punishment ought to have been awarded.

15. Shri Badadare, replied that the Complainant dashed one tractor in the past and was fined to Rs. 1000. However, there was no improvement on his part. As such, punishment awarded is commensurate to the proved misconduct.

16. In my judgement, the Complainant c annot dis-own his responsibility. He was driving a passenger vehicle and ought to have been more alert, especially during the night time. Impugned punishment will certainly be financial loss, But that does not automstically mean that it is unjustifiable or shockingly disproportionate. The Corporation has to maintain discipline and the punishment must have. An element of detterence to other drivers. In the circumstances, impugned punishment cannot be said to be unjustifiable or shockingly dispropartionate. Accordingly, I answer issue No. 4 in the negative and pass following order :—

Order

(*i*) The Complaint is dismissed.

(*ii*) Parties shall bear their own costs.

C. A. JADHAV,

Member,

Industrial Court Kolhapur.

Kolhapur,

Dated the 2nd December 2003.

V. D. PARDESHI,

Asstt. Registrar,

Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

APPEAL (MMH) No. 1 OF 1992.—(1) Shri A. M. Jamale, Inspector, Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, Plot No. 2, Khade Building, Shahu Market Yard, Kolhapur.—*Appellant*—*Versus*—(1) Shri Satish Anantrao Gargate, (2) Shri Shirish Anantrao Gargate, R/o. 645, E-Shahupuri, Kolhapur.—*Respondents.*

In the matter of Appeal u/s. 17 C read with 17 D of the M.M.H. Manual Workers Welfare Act, 1969.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Shri M. S. Topkar and D. N. Patil, Advocates for the Appellant.

Shri S. R. Rane, Advocate for the Respondent.

Judgement

This is an Appeal under section 17 C and 17 D of the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as the Mathadi Act), by Original Complainant challenging legality of judgment and order passed in Complaint (MMH) No. 8 of 1986 by Labour Court, Kolhapur, whereby the original accused is acquitted of alleged offences.

2. Admittedly present Appellant (hereinafter referred to as the Complainant) is appointed as Inspector under the Mathadi Act. He visited shop of present Respondents 1 and 2 (hereinafter referred to as the accused) on 19th December 1985 and found that the accused have not registered their establishment under the Mathadi Act, have not lodged particulars of the work-load handled by the registered workers to the Board and have not paid levy from 1st May 1985 to the Board and also not deposited gross wages of the workers with the Board. He then filed above complaint alleging commission of offences under the Mathadi Act. The accused then appeared on 12th September 1996 and were released on personal bond of Rs. 300 each. The accused pleaded not guilty. The Complainant then examined himself and was cross-examined on behalf of the accused. The accused came with a defence that the scheme under the Mathadi Act and scheme thereunder is not applicable to their firm and hence they have not committed any offence. None was examined in defence.

3. Learned Labour Court, on perusal of evidence and hearing both sides, observed that the work "Shop" will have to be read egusdem generis with the word 'grocery markets' preceding it and the fertilizer shop cannot be said to be 'grocery shop.' It therefore, held that the scheme under the Mathadi Act is inapplicable to the fertilizer shop of the accused and they have not committed any offence under the Mathadi Act. Finally, it acquitted the accused on 20th June 1992. Said decision is challenged in this appeal.

4. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether Original Complainant has proved that the Mathadi Act and Scheme framed thereunder is applicable to the Shop of Accused Nos.1 and 2 ?

(*ii*) Whether impugned decision warrants interference ?

(*iii*) What order ?

5. My findings, on above points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) The Appeals is dismissed.

Reasons

6. Factual position is no longer in dispute. The Complainant visited shop of the accused on 19th December 1985 and carried out inspection of the record.

7. Shri Patil, learned Advocate representing the Appellant - Original Complainant argued that the Kolhapur Scheme is made application to the shops in connection with loading, unloading, stocking, carrying, weighing, measuring etc. and the accused are covered by said category. As such, the Mathadi Act and the scheme thereunder is squarely applicable to shop of the accused.

8. The Mathadi Act being a penal statute has to be construed strictly. The word 'shop' appearing in the schedule to the Mathadi Act will have to be construed egusdem generis which mean 'of the same kind and nature' with the word grocery market preceding it. Fertilizer is not a grocery article and fertilizer shop, therefore, cannot be said to be a grocary shop. The Complainant has not stated in his report that main business of the accused is to hire or to give on hire public transport vehicles. As such, learned Labour Court has rightly held that the scheme was inapplicable to fertilizer shop of the accused and thereby acquitted the accused. Accordingly, I answer Point Nos. 1 and 2 in the negative and pass following order :—

Order

(*i*) The Appeal is dismissed.

(*ii*) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 28th November 2003.

V. D. PARDESHI,
Assistant Registrar,
Industrial Court, Kolhapur.

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY SHRI PARSHURAM JAGANNATH GOSAVI, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004, EDITOR : SHRI PARSHURAM JAGANNATH GOSAVI.